

LEGISLATIVE BILL 63

Approved by the Governor May 27, 2009

Introduced by Friend, 10; Howard, 9; Rogert, 16; Mello, 5; Nordquist, 7.

FOR AN ACT relating to law; to amend sections 28-101, 28-111, 28-308, 28-309, 28-929, 28-930, 28-1201, 28-1202, 28-1204, 28-1204.01, 28-1204.04, 28-1205, 28-1206, 28-1207, 28-1208, 28-1212.02, 28-1212.03, 29-401, 29-901, 29-901.01, 29-1912, 29-2320, 29-2321, 43-245, 43-250, 43-276, 69-2407, and 83-183, Reissue Revised Statutes of Nebraska, and sections 13-2610, 47-632, 60-497.01, 69-2404, 69-2410, and 69-2430, Revised Statutes Cumulative Supplement, 2008; to permit the use of the Convention Center Support Fund for the reduction of street and gang violence; to change provisions relating to penalty enhancements, assault, firearm and handgun offenses, deadly weapon offenses, bail, handgun certificates, and concealed handgun permits; to prohibit the unauthorized application of graffiti, discharge of a firearm while in or near a motor vehicle, and unlawful membership recruitment for an organization; to change provisions relating to the use of jailhouse witnesses and appeals by the Attorney General; to change and provide penalties; to change provisions relating to detention of juveniles and the Nebraska Juvenile Code; to provide for the transfer of community corrections administrative funds to the Office of Violence Prevention; to require abstracts of convictions to be transmitted to the Director of Motor Vehicles; to create the Office of Violence Prevention, an advisory council, and a fund; to permit supervised employment of persons committed to the Department of Correctional Services; to adopt the Lindsay Ann Burke Act; to eliminate provisions relating to the use of jailhouse informers and persons released on probation, parole, or work release by law enforcement; to harmonize provisions; to provide severability; to repeal the original sections; to outright repeal sections 29-1928, 29-1929, and 29-2262.01, Reissue Revised Statutes of Nebraska; and to declare an emergency.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 13-2610, Revised Statutes Cumulative Supplement, 2008, is amended to read:

13-2610 (1) Upon the annual certification under section 13-2609, the State Treasurer shall transfer after the audit the amount certified to the Convention Center Support Fund. The Convention Center Support Fund is created. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(2)(a) It is the intent of the Legislature to appropriate from the fund to any political subdivision for which an application for state assistance under the Convention Center Facility Financing Assistance Act has been approved an amount not to exceed (i) seventy percent of the state sales tax revenue collected by retailers and operators doing business at such facilities on sales at such facilities, state sales tax revenue collected on primary and secondary box office sales of admissions to such facilities, and state sales tax revenue collected by associated hotels, (ii) seventy-five million dollars for any one approved project, or (iii) the total cost of acquiring, constructing, improving, or equipping the eligible facility. State assistance shall not be used for an operating subsidy or other ancillary facility.

(b) Ten percent of such funds appropriated to a city of the metropolitan class under this subsection shall be equally distributed to areas with a high concentration of poverty to (i) showcase important historical aspects of such areas or (ii) assist with the reduction of street and gang violence in such areas.

(c) Each area with a high concentration of poverty that has been distributed funds under subdivision (b) of this subsection shall establish a development fund and form a committee which shall identify and research potential projects and make final determinations on the use of state sales tax revenue received for such projects.

(d) A committee formed in subdivision (c) of this subsection shall include the following three members:

(i) The member of the city council whose district includes a majority of the census tracts which each contain a percentage of persons below the poverty line of greater than thirty percent, as determined by the most

recent federal decennial census, within the area with a high concentration of poverty;

(ii) The commissioner of the county whose district includes a majority of the census tracts which each contain a percentage of persons below the poverty line of greater than thirty percent, as determined by the most recent federal decennial census, within the area with a high concentration of poverty; and

(iii) A resident of the area with a high concentration of poverty, appointed by the other two members of the committee.

(e) A committee formed in subdivision (c) of this subsection shall solicit project ideas from the public and shall hold a public hearing in the area with a high concentration of poverty. Notice of a proposed hearing shall be provided in accordance with the procedures for notice of a public hearing pursuant to section 18-2115. The committee shall research potential projects in its area and make the final determination regarding the annual distribution of funding to such projects.

(f) For purposes of this subsection, an area with a high concentration of poverty means an area within the corporate limits of a city of the metropolitan class consisting of one or more contiguous census tracts, as determined by the most recent federal decennial census, which contain a percentage of persons below the poverty line of greater than thirty percent, and all census tracts contiguous to such tract or tracts, as determined by the most recent federal decennial census.

(3) State assistance to the political subdivision shall no longer be available upon the retirement of the bonds issued to acquire, construct, improve, or equip the facility or any subsequent bonds that refunded the original issue or when state assistance reaches the amount determined under subdivision (2)(a) of this section, whichever comes first.

(4) The remaining thirty percent of state sales tax revenue collected by retailers and operators doing business at such facilities on sales at such facilities, state sales tax revenue collected on primary and secondary box office sales of admissions to such facilities, and state sales tax revenue collected by associated hotels, shall be appropriated by the Legislature to the Local Civic, Cultural, and Convention Center Financing Fund.

(5) Any municipality that has applied for and received a grant of assistance under the Local Civic, Cultural, and Convention Center Financing Act may not receive state assistance under the Convention Center Facility Financing Assistance Act.

Sec. 2. Section 28-101, Reissue Revised Statutes of Nebraska, is amended to read:

28-101 Sections 28-101 to 28-1350 and sections 6, 20, and 21 of this act shall be known and may be cited as the Nebraska Criminal Code.

Sec. 3. Section 28-111, Reissue Revised Statutes of Nebraska, is amended to read:

28-111 Any person who commits one or more of the following criminal offenses against a person or a person's property because of the person's race, color, religion, ancestry, national origin, gender, sexual orientation, age, or disability or because of the person's association with a person of a certain race, color, religion, ancestry, national origin, gender, sexual orientation, age, or disability shall be punished by the imposition of the next higher penalty classification than the penalty classification prescribed for the criminal offense, unless such criminal offense is already punishable as a Class IB felony or higher classification: Manslaughter, section 28-305; assault in the first degree, section 28-308; assault in the second degree, section 28-309; assault in the third degree, section 28-310; terroristic threats, section 28-311.01; stalking, section 28-311.03; kidnapping, section 28-313; false imprisonment in the first degree, section 28-314; false imprisonment in the second degree, section 28-315; sexual assault in the first degree, section 28-319; sexual assault in the second or third degree, section 28-320; sexual assault of a child, sections 28-319.01 and 28-320.01; arson in the first degree, section 28-502; arson in the second degree, section 28-503; arson in the third degree, section 28-504; criminal mischief, section 28-519; unauthorized application of graffiti, section 6 of this act; criminal trespass in the first degree, section 28-520; or criminal trespass in the second degree, section 28-521.

Sec. 4. Section 28-308, Reissue Revised Statutes of Nebraska, is amended to read:

28-308 (1) A person commits the offense of assault in the first degree if he or she intentionally or knowingly causes serious bodily injury to another person.

(2) Assault in the first degree shall be a Class ~~III~~ II felony.

Sec. 5. Section 28-309, Reissue Revised Statutes of Nebraska, is amended to read:

28-309 (1) A person commits the offense of assault in the second degree if he or she:

(a) Intentionally or knowingly causes bodily injury to another person with a dangerous instrument;

(b) Recklessly causes serious bodily injury to another person with a dangerous instrument; or

(c) While during confinement or in legal custody of the Department of Correctional Services or in any county jail, unlawfully strikes or wounds another.

(2) Assault in the second degree shall be a Class ~~III~~ III felony.

Sec. 6. (1) Any person who knowingly and intentionally applies graffiti of any type on any building, public or private, or any other tangible property owned by any person, firm, or corporation or any public entity or instrumentality, without the express permission of the owner or operator of the property, commits the offense of unauthorized application of graffiti.

(2) Unauthorized application of graffiti is a Class III misdemeanor for a first offense and a Class IV felony for a second or subsequent offense.

(3) Upon conviction of an offense under this section, the court may, in addition to any other punishment imposed, order the defendant to clean up, repair, or replace the damaged property, keep the defaced property or another specified property in the community free of graffiti or other inscribed materials for up to one year, or order a combination of restitution and labor.

(4) Upon conviction of an offense under this section, the court may, in addition to any other punishment imposed, order the defendant to undergo counseling.

(5) Upon conviction of an offense under this section, the court may, in addition to any other punishment imposed, order the suspension of the defendant's motor vehicle operator's license for up to one year. A copy of an abstract of the court's conviction, including an adjudication of a juvenile, shall be transmitted to the director pursuant to sections 60-497.01 to 60-497.04.

(6) For purposes of this section, graffiti means any letter, word, name, number, symbol, slogan, message, drawing, picture, writing, or other mark of any kind visible to the public that is drawn, painted, chiseled, scratched, or etched on a rock, tree, wall, bridge, fence, gate, building, or other structure. Graffiti does not include advertising or any other letter, word, name, number, symbol, slogan, message, drawing, picture, writing, or other mark of any kind lawfully placed on property by an owner of the property, a tenant of the property, or an authorized agent for such owner or tenant.

Sec. 7. Section 28-929, Reissue Revised Statutes of Nebraska, is amended to read:

28-929 (1) A person commits the offense of assault on an officer in the first degree if he or she intentionally or knowingly causes serious bodily injury to a peace officer, a probation officer, or an employee of the Department of Correctional Services while such officer or employee is engaged in the performance of his or her official duties.

(2) Assault on an officer in the first degree shall be a Class II ~~ID~~ felony.

Sec. 8. Section 28-930, Reissue Revised Statutes of Nebraska, is amended to read:

28-930 (1) A person commits the offense of assault on an officer in the second degree if he or she:

(a) Intentionally or knowingly causes bodily injury with a dangerous instrument to a peace officer, a probation officer, or an employee of the Department of Correctional Services while such officer or employee is engaged in the performance of his or her official duties; or

(b) Recklessly causes bodily injury with a dangerous instrument to a peace officer, a probation officer, or an employee of the Department of Correctional Services while such officer or employee is engaged in the performance of his or her official duties.

(2) Assault on an officer in the second degree shall be a Class III ~~II~~ felony.

Sec. 9. Section 28-1201, Reissue Revised Statutes of Nebraska, is amended to read:

28-1201 For purposes of sections 28-1201 to ~~28-1212~~, 28-1212.03 and section 20 of this act, unless the context otherwise requires:

(1) Firearm ~~shall mean~~ means any weapon which is designed to or may readily be converted to expel any projectile by the action of an explosive or frame or receiver of any such weapon;

(2) Fugitive from justice ~~shall mean~~ means any person who has fled or is fleeing from any peace officer to avoid prosecution or incarceration for a felony;

(3) Handgun means any firearm with a barrel less than sixteen inches in length or any firearm designed to be held and fired by the use of a single hand;

~~(3)~~ (4) Juvenile shall mean means any person under the age of eighteen years;

~~(4)~~ (5) Knife shall mean means any dagger, dirk, knife, or stiletto with a blade over three and one-half inches in length or any other dangerous instrument capable of inflicting cutting, stabbing, or tearing wounds;

~~(5)~~ (6) Knuckles and brass or iron knuckles shall mean means any instrument that consists of finger rings or guards made of a hard substance and that is designed, made, or adapted for the purpose of inflicting serious bodily injury or death by striking a person with a fist enclosed in the knuckles;

~~(6)~~ (7) Machine gun shall mean means any firearm, whatever its size and usual designation, that shoots automatically more than one shot, without manual reloading, by a single function of the trigger;

~~(7)~~ (8) Short rifle shall mean means a rifle having a barrel less than sixteen inches long or an overall length of less than twenty-six inches; and

~~(8)~~ (9) Short shotgun shall mean means a shotgun having a barrel or barrels less than eighteen inches long or an overall length of less than twenty-six inches.

Sec. 10. Section 28-1202, Reissue Revised Statutes of Nebraska, is amended to read:

28-1202 (1)(a) Except as otherwise provided in this section, any person who carries a weapon or weapons concealed on or about his or her person, such as a ~~revolver, pistol, bowie knife, dirk or knife with a dirk blade attachment,~~ handgun, a knife, brass or iron knuckles, or any other deadly weapon, commits the offense of carrying a concealed weapon.

(b) It is an affirmative defense that the defendant was engaged in any lawful business, calling, or employment at the time he or she was carrying any weapon or weapons and the circumstances in which such person was placed at the time were such as to justify a prudent person in carrying the weapon or weapons for the defense of his or her person, property, or family.

(2) This section does not apply to a person who is the holder of a valid permit issued under the Concealed Handgun Permit Act if the concealed weapon the defendant is carrying is a handgun, ~~as defined in section 69-2429.~~

(3) Carrying a concealed weapon is a Class I misdemeanor.

(4) In the case of a second or subsequent conviction under this section, carrying a concealed weapon is a Class IV felony.

Sec. 11. Section 28-1204, Reissue Revised Statutes of Nebraska, is amended to read:

28-1204 (1) Any person under the age of eighteen years who possesses a ~~pistol, revolver, or any other form of short-barreled hand firearm~~ handgun commits the offense of unlawful possession of a ~~revolver, handgun.~~

(2) ~~The provisions of this~~ This section shall does not apply to the issuance of ~~such firearms~~ handguns to members of the armed forces of the United States, active or reserve, National Guard of this state, or Reserve Officers Training Corps, when on duty or training, or to the temporary loan of ~~pistols, revolvers, or any other form of short-barreled firearms~~ handguns for instruction under the immediate supervision of a parent or guardian or adult instructor.

(3) Unlawful possession of a ~~revolver~~ handgun is a Class ~~III~~ I misdemeanor.

Sec. 12. Section 28-1204.01, Reissue Revised Statutes of Nebraska, is amended to read:

28-1204.01 (1) Any person who knowingly and intentionally does or attempts to sell, provide, loan, deliver, or in any other way transfer the possession of a firearm to a juvenile commits the offense of unlawful transfer of a firearm to a juvenile. The county attorney shall have a copy of the petition served upon the owner of the firearm, if known, in person or by registered or certified mail at his or her last-known address.

(2) This section ~~shall~~ does not apply to the transfer of a firearm, ~~other than the types specified in section 28-1204~~ a handgun, to a juvenile:

(a) From a person related to such juvenile within the second degree of consanguinity or affinity if the transfer of physical possession of such firearm does not occur until such time as express permission has been obtained from the juvenile's parent or guardian;

(b) For a legitimate and lawful sporting purpose; or

(c) Who is under direct adult supervision in an appropriate educational program.

(3) This section ~~shall apply~~ applies to the transfer of ~~any firearm described in section 28-1204,~~ a handgun except as specifically provided in subsection (2) of section 28-1204.

(4) Unlawful transfer of a firearm to a juvenile is a Class ~~IV~~ III felony.

Sec. 13. Section 28-1204.04, Reissue Revised Statutes of Nebraska, is amended to read:

28-1204.04 (1) Any person who possesses a firearm in a school, on school grounds, in a school-owned vehicle, or at a school-sponsored activity or athletic event shall be guilty of the offense of unlawful possession of a firearm on school grounds. Unlawful possession of a firearm on school grounds is a Class ~~II misdemeanor,~~ IV felony. This subsection shall not apply to (a) the issuance of firearms to or possession by members of the armed forces of the United States, active or reserve, National Guard of this state, or Reserve Officers Training Corps or peace officers or other duly authorized law enforcement officers when on duty or training, (b) firearms which may lawfully be possessed by the person receiving instruction, for instruction under the immediate supervision of an adult instructor, or (c) firearms contained within a private vehicle operated by a nonstudent adult which are not loaded and (i) are encased or (ii) are in a locked firearm rack that is on a motor vehicle. For purposes of this subsection, encased shall mean enclosed in a case that is expressly made for the purpose of containing a firearm and that is completely zipped, snapped, buckled, tied, or otherwise fastened with no part of the firearm exposed.

(2) Any firearm possessed in violation of subsection (1) of this section in a school, on school grounds, in a school-owned vehicle, or at a school-sponsored activity or athletic event shall be confiscated without warrant by a peace officer or may be confiscated without warrant by school administrative or teaching personnel. Any firearm confiscated by school administrative or teaching personnel shall be delivered to a peace officer as soon as practicable.

(3) Any firearm confiscated by or given to a peace officer pursuant to subsection (2) of this section shall be declared a common nuisance and shall be held by the peace officer prior to his or her delivery of the firearm to the property division of the law enforcement agency which employs the peace officer. The property division of such law enforcement agency shall hold such firearm for as long as the firearm is needed as evidence. After the firearm is no longer needed as evidence, it shall be destroyed in such manner as the court may direct.

(4) Whenever a firearm is confiscated and held pursuant to this section or section 28-1204.02, the peace officer who received such firearm shall cause to be filed within ten days after the confiscation a petition for destruction of such firearm. The petition shall be filed in the district court of the county in which the confiscation is made. The petition shall describe the firearm held, state the name of the owner, if known, allege the essential elements of the violation which caused the confiscation, and conclude with a prayer for disposition and destruction in such manner as the court may direct. At any time after the confiscation of the firearm and prior to court disposition, the owner of the firearm seized may petition the district court of the county in which the confiscation was made for possession of the firearm. The court shall release the firearm to such owner only if the claim of ownership can reasonably be shown to be true and either (a) the owner of the firearm can show that the firearm was taken from his or her property or place of business unlawfully or without the knowledge and consent of the owner and that such property or place of business is different from that of the person from whom the firearm was confiscated or (b) the owner of the firearm is acquitted of the charge of unlawful possession of a ~~revolver~~ handgun in violation of section 28-1204, unlawful transfer of a firearm to a juvenile, or unlawful possession of a firearm on school grounds. No firearm having significant antique value or historical significance as determined by the Nebraska State Historical Society shall be destroyed. If a firearm has significant antique value or historical significance, it shall be sold at auction and the proceeds ~~deposited in the permanent school fund,~~ shall be remitted to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

Sec. 14. Section 28-1205, Reissue Revised Statutes of Nebraska, is amended to read:

28-1205 ~~(1)~~ (1)(a) Any person who uses a firearm, a knife, brass or iron knuckles, or any other deadly weapon to commit any felony which may be prosecuted in a court of this state ~~or who unlawfully possesses a~~

~~firearm, a knife, brass or iron knuckles, or any other deadly weapon during the commission of any felony which may be prosecuted in a court of this state commits the offense of using use of a deadly weapon to commit a felony.~~

~~(2)(a) (b) Use of a deadly weapon, other than a firearm, to commit a felony is a Class III II felony.~~

~~(b) (c) Use of a deadly weapon, which is a firearm, to commit a felony is a Class II IC felony.~~

(2) (a) Any person who possesses a firearm, a knife, brass or iron knuckles, or a destructive device during the commission of any felony which may be prosecuted in a court of this state commits the offense of possession of a deadly weapon during the commission of a felony.

(b) Possession of a deadly weapon, other than a firearm, during the commission of a felony is a Class III felony.

(c) Possession of a deadly weapon, which is a firearm, during the commission of a felony is a Class II felony.

(3) The crimes defined in this section shall be treated as separate and distinct offenses from the felony being committed, and sentences imposed under this section shall be consecutive to any other sentence imposed.

(4) Possession of a deadly weapon may be proved through evidence demonstrating either actual or constructive possession of a firearm, a knife, brass or iron knuckles, or a destructive device during, immediately prior to, or immediately after the commission of a felony.

(5) For purposes of this section:

(a) Destructive device has the same meaning as in section 28-1213;
and

(b) Use of a deadly weapon includes the discharge, employment, or visible display of any part of a firearm, a knife, brass or iron knuckles, any other deadly weapon, or a destructive device during, immediately prior to, or immediately after the commission of a felony or communication to another indicating the presence of a firearm, a knife, brass or iron knuckles, any other deadly weapon, or a destructive device during, immediately prior to, or immediately after the commission of a felony, regardless of whether such firearm, knife, brass or iron knuckles, deadly weapon, or destructive device was discharged, actively employed, or displayed.

Sec. 15. Section 28-1206, Reissue Revised Statutes of Nebraska, is amended to read:

28-1206 ~~(1)~~ (1) (a) Any person who possesses any a firearm, a knife, or brass or iron knuckles and who has previously been convicted of a felony, or who is a fugitive from justice, or who is the subject of a current and validly issued domestic violence protection order and is knowingly violating such order, or (b) any person who possesses any firearm or brass or iron knuckles and who has been convicted within the past seven years of a misdemeanor crime of domestic violence, commits the offense of possession of a deadly weapon by a felon or a fugitive from justice, prohibited person.

(2) Such The felony conviction may have been had in any court in the United States, the several states, territories, or possessions, or the District of Columbia.

(3) (a) Possession of a deadly weapon other than a firearm by a felon or a fugitive from justice is a Class IV which is not a firearm by a prohibited person is a Class III felony.

(b) Possession of a deadly weapon which is a firearm by a felon or a fugitive from justice is a Class III prohibited person is a Class ID felony for a first offense and a Class IB felony for a second or subsequent offense.

(4) (a) (i) For purposes of this section, misdemeanor crime of domestic violence means:

(A) (I) A crime that is classified as a misdemeanor under the laws of the United States or the District of Columbia or the laws of any state, territory, possession, or tribe;

(II) A crime that has, as an element, the use or attempted use of physical force or the threatened use of a deadly weapon; and

(III) A crime that is committed by another against his or her spouse, his or her former spouse, a person with whom he or she has a child in common whether or not they have been married or lived together at any time, or a person with whom he or she is or was involved in a dating relationship as defined in section 28-323; or

(B) (I) Assault in the third degree under section 28-310, stalking under subsection (1) of section 28-311.04, false imprisonment in the second degree under section 28-315, or first offense domestic assault in the third degree under subsection (1) of section 28-323 or any attempt or conspiracy to commit one of these offenses; and

(II) The crime is committed by another against his or her spouse, his or her former spouse, a person with whom he or she has a child in common

whether or not they have been married or lived together at any time, or a person with whom he or she is or was involved in a dating relationship as defined in section 28-323.

(ii) A person shall not be considered to have been convicted of a misdemeanor crime of domestic violence unless:

(A) The person was represented by counsel in the case or knowingly and intelligently waived the right to counsel in the case; and

(B) In the case of a prosecution for a misdemeanor crime of domestic violence for which a person was entitled to a jury trial in the jurisdiction in which the case was tried, either:

(I) The case was tried to a jury; or

(II) The person knowingly and intelligently waived the right to have the case tried to a jury.

(b) For purposes of this section, subject of a current and validly issued domestic violence protection order pertains to a current court order that was validly issued pursuant to section 28-311.09 or 42-924 or that meets or exceeds the criteria set forth in section 28-311.10 regarding protection orders issued by a court in another state, territory, possession, or tribe.

Sec. 16. Section 28-1207, Reissue Revised Statutes of Nebraska, is amended to read:

28-1207 (1) Any person who knowingly possesses, receives, sells, or leases, other than by delivery to law enforcement officials, any firearm from which the manufacturer's identification mark or serial number has been removed, defaced, altered, or destroyed, commits the offense of possession of a defaced firearm.

(2) Possession of a defaced firearm is a Class IV III felony.

Sec. 17. Section 28-1208, Reissue Revised Statutes of Nebraska, is amended to read:

28-1208 (1) Any person who intentionally removes, defaces, covers, alters, or destroys the manufacturer's identification mark or serial number or other distinguishing numbers on any firearm commits the offense of defacing a firearm.

(2) Defacing a firearm is a Class IV III felony.

Sec. 18. Section 28-1212.02, Reissue Revised Statutes of Nebraska, is amended to read:

28-1212.02 Any person who unlawfully and intentionally discharges a firearm at an inhabited dwelling house, occupied building, occupied motor vehicle, occupied aircraft, inhabited motor home as defined in section 71-4603, or inhabited camper unit as defined in section 60-1801 shall be guilty of a Class III ID felony.

Sec. 19. Section 28-1212.03, Reissue Revised Statutes of Nebraska, is amended to read:

28-1212.03 Any person who possesses, receives, retains, or disposes of a stolen firearm knowing that it has been or believing that it has been stolen shall be guilty of a Class IV III felony unless the firearm is possessed, received, retained, or disposed of with intent to restore it to the owner.

Sec. 20. Any person, within the territorial boundaries of any city, incorporated village, or county containing a city of the metropolitan class or primary class, who unlawfully, knowingly, and intentionally or recklessly discharges a firearm, while in or in the proximity of any motor vehicle that such person has just exited, at or in the general direction of any person, dwelling, building, structure, occupied motor vehicle, occupied aircraft, inhabited motor home as defined in section 71-4603, or inhabited camper unit as defined in section 60-1801, is guilty of a Class IC felony.

Sec. 21. (1) A person commits the offense of unlawful membership recruitment into an organization or association when he or she knowingly and intentionally coerces, intimidates, threatens, or inflicts bodily harm upon another person in order to entice that other person to join or prevent that other person from leaving any organization, group, enterprise, or association whose members, individually or collectively, engage in or have engaged in any of the following criminal acts for the benefit of, at the direction of, or on behalf of the organization, group, enterprise, or association or any of its members:

(a) Robbery under section 28-324;

(b) Arson in the first, second, or third degree under section 28-502, 28-503, or 28-504, respectively;

(c) Burglary under section 28-507;

(d) Murder in the first degree, murder in the second degree, or manslaughter under section 28-303, 28-304, or 28-305, respectively;

(e) Violations of the Uniform Controlled Substances Act that involve possession with intent to deliver, distribution, delivery, or manufacture of a

controlled substance;

(f) Unlawful use, possession, or discharge of a firearm or other deadly weapon under sections 28-1201 to 28-1212.03 and section 20 of this act;

(g) Assault in the first degree or assault in the second degree under section 28-308 or 28-309, respectively;

(h) Assault on an officer in the first, second, or third degree under section 28-929, 28-930, or 28-931, respectively, or assault on an officer using a motor vehicle under section 28-931.01;

(i) Theft by unlawful taking or disposition under section 28-511;

(j) Theft by receiving stolen property under section 28-517;

(k) Theft by deception under section 28-512;

(l) Theft by extortion under section 28-513;

(m) Kidnapping under section 28-313;

(n) Any forgery offense under sections 28-602 to 28-605;

(o) Criminal impersonation under section 28-608;

(p) Tampering with a publicly exhibited contest under section 28-614;

(q) Unauthorized use of a financial transaction device or criminal possession of a financial transaction device under section 28-620 or 28-621, respectively;

(r) Pandering under section 28-802;

(s) Bribery, bribery of a witness, or bribery of a juror under section 28-917, 28-918, or 28-920, respectively;

(t) Tampering with a witness or an informant or jury tampering under section 28-919;

(u) Unauthorized application of graffiti under section 6 of this act;

(v) Dogfighting, cockfighting, bearbaiting, or pitting an animal against another under section 28-1005; or

(w) Promoting gambling in the first degree under section 28-1102.

(2) Unlawful membership recruitment into an organization or association is a Class IV felony.

Sec. 22. Section 29-401, Reissue Revised Statutes of Nebraska, is amended to read:

29-401 Every sheriff, deputy sheriff, marshal, deputy marshal, security guard, police officer, or peace officer as defined in subdivision (15) of section 49-801 shall arrest and detain any person found violating any law of this state or any legal ordinance of any city or incorporated village until a legal warrant can be obtained, except that (1) any such law enforcement officer taking a juvenile under the age of eighteen years into his or her custody for any violation herein defined shall proceed as set forth in sections 43-248, 43-248.01, 43-250, 43-251, 43-251.01, and 43-253 and (2) the court in which the juvenile is to appear shall not accept a plea from the juvenile until finding that the parents of the juvenile have been notified or that reasonable efforts to notify such parents have been made as provided in section 43-253.

Sec. 23. Section 29-901, Reissue Revised Statutes of Nebraska, is amended to read:

29-901 Any bailable defendant shall be ordered released from custody pending judgment on his or her personal recognizance unless the judge determines in the exercise of his or her discretion that such a release will not reasonably assure the appearance of the defendant as required or that such a release could jeopardize the safety and maintenance of evidence or victims, witnesses, or other persons in the community. When such determination is made, the judge shall either in lieu of or in addition to such a release impose the first of the following conditions of release which will reasonably assure the appearance of the person for trial or, if no single condition gives that assurance, any combination of the following conditions:

(1) Place the defendant in the custody of a designated person or organization agreeing to supervise the defendant;

(2) Place restrictions on the travel, association, or place of abode of the defendant during the period of such release;

(3) Require, at the option of any bailable defendant, either of the following:

(a) The execution of an appearance bond in a specified amount and the deposit with the clerk of the court in cash of a sum not to exceed ten percent of the amount of the bond, ninety percent of such deposit to be returned to the defendant upon the performance of the appearance or appearances and ten percent to be retained by the clerk as appearance bond costs, except that when no charge is subsequently filed against the defendant or if the charge or charges which are filed are dropped before the appearance of the defendant which the bond was to assure, the entire deposit shall be

returned to the defendant. If the bond is subsequently reduced by the court after the original bond has been posted, no additional appearance bond costs shall be retained by the clerk. The difference in the appearance bond costs between the original bond and the reduced bond shall be returned to the defendant. In no event shall the deposit be less than twenty-five dollars. Whenever jurisdiction is transferred from a court requiring an appearance bond under this subdivision to another state court, the transferring court shall transfer the ninety percent of the deposit remaining after the appearance bond costs have been retained. No further costs shall be levied or collected by the court acquiring jurisdiction; or

(b) The execution of a bail bond with such surety or sureties as shall seem proper to the judge or, in lieu of such surety or sureties, at the option of such person, a cash deposit of such sum so fixed, conditioned for his or her appearance before the proper court, to answer the offense with which he or she may be charged and to appear at such times thereafter as may be ordered by the proper court. The cash deposit shall be returned to the defendant upon the performance of all appearances.

If the amount of bail is deemed insufficient by the court before which the offense is pending, the court may order an increase of such bail and the defendant shall provide the additional undertaking, written or cash, to secure his or her release. All recognizances in criminal cases shall be in writing and be continuous from term to term until final judgment of the court in such cases and shall also extend, when the court has suspended execution of sentence for a limited time, as provided in section 29-2202, or, when the court has suspended execution of sentence to enable the defendant to apply for a writ of error to the Supreme Court or Court of Appeals, as provided in section 29-2301, until the period of suspension has expired. When two or more indictments or informations are returned against the same person at the same term of court, the recognizance given may be made to include all offenses charged therein. Each surety on such recognizance shall be required to justify under oath in a sum twice the amount of such recognizance and give the description of real estate owned by him or her of a value above encumbrance equal to the amount of such justification and shall name all other cases pending in which he or she is a surety. No one shall be accepted as surety on recognizance aggregating a sum in excess of his or her equity in the real estate, but such recognizance shall not constitute a lien on the real estate described therein until judgment is entered thereon against such surety; or

(4) Impose any other condition deemed reasonably necessary to assure appearances as required, including a condition requiring that the defendant return to custody after specified hours.

Sec. 24. Section 29-901.01, Reissue Revised Statutes of Nebraska, is amended to read:

29-901.01 In determining which condition or conditions of release shall reasonably assure appearance and deter possible threats to the safety and maintenance of evidence, victims, witnesses, or other persons in the community, the judge shall, on the basis of available information, take into account the nature and circumstances of the offense charged, including any information to indicate that the defendant might engage in additional criminal activity or pose a threat to himself or herself, yet to be collected evidence, alleged victims, potential witnesses, or members of the general public, the defendant's family ties, employment, financial resources, character and mental condition, the length of his the defendant's residence in the community, his the defendant's record of convictions, and his the defendant's record of appearances at court proceedings or of flight to avoid prosecution or of failure to appear at court proceedings.

Sec. 25. Section 29-1912, Reissue Revised Statutes of Nebraska, is amended to read:

29-1912 (1) When a defendant is charged with a felony or when a defendant is charged with a misdemeanor or a violation of a city or village ordinance for which imprisonment is a possible penalty, he or she may request the court where the case is to be tried, at any time after the filing of the indictment, information, or complaint, to order the prosecuting attorney to permit the defendant to inspect and copy or photograph:

(a) The defendant's statement, if any. For purposes of this subdivision, statement shall mean means a written statement made by the defendant and signed or otherwise adopted or approved by him or her, or a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement made by the defendant to an agent of the prosecution, state, or political subdivision thereof, and recorded contemporaneously with the making of such oral statement;

(b) The defendant's prior criminal record, if any;

- (c) The defendant's recorded testimony before a grand jury;
- (d) The names and addresses of witnesses on whose evidence the charge is based;
- (e) The results and reports of physical or mental examinations, and of scientific tests, or experiments made in connection with the particular case, or copies thereof; and
- (f) Documents, papers, books, accounts, letters, photographs, objects, or other tangible things of whatsoever kind or nature which could be used as evidence by the prosecuting authority;
- (g) The known criminal history of a jailhouse witness;
- (h) Any deal, promise, inducement, or benefit that the prosecuting attorney or any person acting on behalf of the prosecuting attorney has knowingly made or may make in the future to the jailhouse witness;
- (i) The specific statements allegedly made by the defendant against whom the jailhouse witness will testify and the time, place, and manner of the defendant's disclosures;
- (j) The case name and jurisdiction of any criminal cases known to the prosecuting attorney in which a jailhouse witness testified about statements made by another criminal defendant that were disclosed to the jailhouse witness while he or she was a jailhouse witness and whether the jailhouse witness received any deal, promise, inducement, or benefit in exchange for or subsequent to such testimony; and
- (k) Any occasion known to the prosecuting attorney in which the jailhouse witness recanted testimony about statements made by another criminal defendant that were disclosed to the jailhouse witness while he or she was a jailhouse witness and, if any are known, a transcript or copy of such recantation.

(2) The court may issue such an order pursuant to the provisions of this section. In the exercise of its judicial discretion, the court shall consider among other things whether:

- (a) The request is material to the preparation of the defense;
- (b) The request is not made primarily for the purpose of harassing the prosecution or its witnesses;
- (c) The request, if granted, would not unreasonably delay the trial of the offense and an earlier request by the defendant could not have reasonably been made;
- (d) There is no substantial likelihood that the request, if granted, would preclude a just determination of the issues at the trial of the offense; or
- (e) The request, if granted, would not result in the possibility of bodily harm to, or coercion of, witnesses.

(3) Whenever the court refuses to grant an order pursuant to the provisions of this section, it shall render its findings in writing together with the facts upon which the findings are based.

(4) Whenever the prosecuting attorney believes that the granting of an order under the provisions of this section will result in the possibility of bodily harm to witnesses or that witnesses will be coerced, the court may permit him or her to make such a showing in the form of a written statement to be inspected by the court alone. The statement shall be sealed and preserved in the records of the court to be made available to the appellate court in the event of an appeal by the defendant.

(5) For purposes of subdivisions (1)(g) through (k) of this section, jailhouse witness means a person in the physical custody of any jail or correctional institution as (a) an accused defendant, (b) a convicted defendant awaiting sentencing, or (c) a convicted defendant serving a jail sentence, at the time the statements the jailhouse witness will testify about were disclosed.

Sec. 26. Section 29-2320, Reissue Revised Statutes of Nebraska, is amended to read:

29-2320 Whenever a defendant is found guilty of a felony following a trial or the entry of a plea of guilty or tendering a plea of nolo contendere, the prosecuting attorney charged with the prosecution of such defendant or the Attorney General may appeal the sentence imposed if ~~such attorney reasonably believes,~~ there is a reasonable belief, based on all of the facts and circumstances of the particular case, that the sentence is excessively lenient.

Sec. 27. Section 29-2321, Reissue Revised Statutes of Nebraska, is amended to read:

29-2321 (1) Appeals under section 29-2320 sections 29-2320 to 29-2325 shall be taken, by either the Attorney General or the prosecuting attorney, as follows:

- (a) If the appeal is filed by the Attorney General, a notice

of appeal shall be filed in the district court within twenty days after imposition of the sentence. A copy of the notice of appeal shall be sent to either the defendant or counsel for the defendant; or

~~(1) Within ten days of the~~ (b) If the prosecuting attorney wishes to file the appeal, he or she, within ten days after imposition of the sentence, the prosecuting attorney shall request the approval of from the Attorney General to proceed with such the appeal. A copy of such the request for approval shall be sent to the defendant or counsel for the defendant.

(2) If the Attorney General approves the request described in subdivision ~~(1)~~ (1)(b) of this section, the prosecuting attorney shall file a notice of appeal indicating such approval in the district court. Such notice of appeal must be filed within twenty days of the imposition of sentence. A copy of the notice of appeal shall be sent to the defendant or counsel for the defendant.

(3) If the Attorney General does not approve the request described in subdivision ~~(1)~~ (1)(b) of this section, an appeal under sections 29-2320 to 29-2325 shall not be permitted. ~~and~~

(4) In addition to such notice of appeal, the docket fee required by section 33-103 shall be deposited with the clerk of the district court.

(5) Upon compliance with the requirements of this section, the appeal shall proceed as provided by law for appeals to the Court of Appeals.

Sec. 28. Section 43-245, Reissue Revised Statutes of Nebraska, is amended to read:

43-245 For purposes of the Nebraska Juvenile Code, unless the context otherwise requires:

(1) Age of majority means nineteen years of age;

(2) Approved center means a center that has applied for and received approval from the Director of the Office of Dispute Resolution under section 25-2909;

(3) Cost or costs means (a) the sum or equivalent expended, paid, or charged for goods or services, or expenses incurred, or (b) the contracted or negotiated price;

(4) Criminal street gang means a group of three or more people with a common identifying name, sign, or symbol whose group identity or purposes include engaging in illegal activities;

(5) Criminal street gang member means a person who willingly or voluntarily becomes and remains a member of a criminal street gang;

~~(4)~~ (6) Juvenile means any person under the age of eighteen;

~~(5)~~ (7) Juvenile court means the separate juvenile court where it has been established pursuant to sections 43-2,111 to 43-2,127 and the county court sitting as a juvenile court in all other counties. Nothing in the Nebraska Juvenile Code shall be construed to deprive the district courts of their habeas corpus, common-law, or chancery jurisdiction or the county courts and district courts of jurisdiction of domestic relations matters as defined in section 25-2740;

~~(6)~~ (8) Juvenile detention facility has the same meaning as in section 83-4,125;

~~(7)~~ (9) Mediator for juvenile offender and victim mediation means a person who (a) has completed at least thirty hours of training in conflict resolution techniques, neutrality, agreement writing, and ethics set forth in section 25-2913, (b) has an additional eight hours of juvenile offender and victim mediation training, and (c) meets the apprenticeship requirements set forth in section 25-2913;

~~(8)~~ (10) Mental health facility means a treatment facility as defined in section 71-914 or a government, private, or state hospital which treats mental illness;

~~(9)~~ (11) Nonoffender means a juvenile who is subject to the jurisdiction of the juvenile court for reasons other than legally prohibited conduct, including, but not limited to, juveniles described in subdivision (3) (a) of section 43-247;

~~(10)~~ (12) Nonsecure detention means detention characterized by the absence of restrictive hardware, construction, and procedure. Nonsecure detention services may include a range of placement and supervision options, such as home detention, electronic monitoring, day reporting, drug court, tracking and monitoring supervision, staff secure and temporary holdover facilities, and group homes;

~~(11)~~ (13) Parent means one or both parents or a stepparent when such stepparent is married to the custodial parent as of the filing of the petition;

~~(12)~~ (14) Parties means the juvenile as described in section 43-247 and his or her parent, guardian, or custodian;

~~(13)~~ (15) Except in proceedings under the Nebraska Indian Child

Welfare Act, relative means father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, first cousin, nephew, or niece;

~~(14)~~ (16) Secure detention means detention in a highly structured, residential, hardware-secured facility designed to restrict a juvenile's movement;

~~(15)~~ (17) Status offender means a juvenile who has been charged with or adjudicated for conduct which would not be a crime if committed by an adult, including, but not limited to, juveniles charged under subdivision (3) (b) of section 43-247 and sections 53-180.01 and 53-180.02; and

~~(16)~~ (18) Traffic offense means any nonfelonious act in violation of a law or ordinance regulating vehicular or pedestrian travel, whether designated a misdemeanor or a traffic infraction.

Sec. 29. Section 43-250, Reissue Revised Statutes of Nebraska, is amended to read:

43-250 A peace officer who takes a juvenile into temporary custody under section 29-401 or 43-248 or pursuant to a legal warrant of arrest shall immediately take reasonable measures to notify the juvenile's parent, guardian, custodian, or relative and shall proceed as follows:

(1) The peace officer shall release such juvenile;

(2) The peace officer shall prepare in triplicate a written notice requiring the juvenile to appear before the juvenile court of the county in which such juvenile was taken into custody at a time and place specified in the notice or at the call of the court. The notice shall also contain a concise statement of the reasons such juvenile was taken into custody. The peace officer shall deliver one copy of the notice to such juvenile and require such juvenile or his or her parent, guardian, other custodian, or relative, or both, to sign a written promise that such signer will appear at the time and place designated in the notice. Upon the execution of the promise to appear, the peace officer shall immediately release such juvenile. The peace officer shall, as soon as practicable, file one copy of the notice with the county attorney and, when required by the juvenile court, also file a copy of the notice with the juvenile court or the officer appointed by the court for such purpose;

(3) While retaining temporary custody, the peace officer shall communicate all relevant available information regarding such juvenile to the probation officer and shall deliver the juvenile, if necessary, to the probation officer. The probation officer shall determine the need for detention of the juvenile as provided in section 43-260.01. Upon determining that the juvenile should be placed in a secure or nonsecure placement and securing placement in such secure or nonsecure setting by the probation officer, the peace officer shall implement the probation officer's decision to release or to detain and place the juvenile. When secure detention of a juvenile is necessary, such detention shall occur within a juvenile detention facility except:

(a) When a juvenile described in subdivision (1) or (2) of section 43-247, except for a status offender, is taken into temporary custody within a metropolitan statistical area and where no juvenile detention facility is reasonably available, the juvenile may be delivered, for temporary custody not to exceed six hours, to a secure area of a jail or other facility intended or used for the detention of adults solely for the purposes of identifying the juvenile and ascertaining his or her health and well-being and for safekeeping while awaiting transport to an appropriate juvenile placement or release to a responsible party;

(b) When a juvenile described in subdivision (1) or (2) of section 43-247, except for a status offender, is taken into temporary custody outside of a metropolitan statistical area and where no juvenile detention facility is reasonably available, the juvenile may be delivered, for temporary custody not to exceed twenty-four hours excluding nonjudicial days and while awaiting an initial court appearance, to a secure area of a jail or other facility intended or used for the detention of adults solely for the purposes of identifying the juvenile and ascertaining his or her health and well-being and for safekeeping while awaiting transport to an appropriate juvenile placement or release to a responsible party;

(c) Whenever a juvenile is held in a secure area of any jail or other facility intended or used for the detention of adults, there shall be no verbal, visual, or physical contact between the juvenile and any incarcerated adult and there shall be adequate staff to supervise and monitor the juvenile's activities at all times. This subdivision shall not apply to a juvenile charged with a felony as an adult in county or district court if he or she is sixteen years of age or older;

(d) If a juvenile is under sixteen years of age or is a juvenile as

described in subdivision (3) of section 43-247, he or she shall not be placed within a secure area of a jail or other facility intended or used for the detention of adults;

(e) If, within the time limits specified in subdivision (3)(a) or (3)(b) of this section, a felony charge is filed against the juvenile as an adult in county or district court, he or she may be securely held in a jail or other facility intended or used for the detention of adults beyond the specified time limits;

(f) A status offender or nonoffender taken into temporary custody shall not be held in a secure area of a jail or other facility intended or used for the detention of adults. A status offender accused of violating a valid court order may be securely detained in a juvenile detention facility longer than twenty-four hours if he or she is afforded a detention hearing before a court within twenty-four hours, excluding nonjudicial days, and if, prior to a dispositional commitment to secure placement, a public agency, other than a court or law enforcement agency, is afforded an opportunity to review the juvenile's behavior and possible alternatives to secure placement and has submitted a written report to the court; and

(g) A juvenile described in subdivision (1) or (2) of section 43-247, except for a status offender, may be held in a secure area of a jail or other facility intended or used for the detention of adults for up to six hours before and six hours after any court appearance;

(4) When a juvenile is taken into temporary custody pursuant to subdivision (3) of section 43-248, the peace officer shall deliver the custody of such juvenile to the Department of Health and Human Services which shall make a temporary placement of the juvenile in the least restrictive environment consistent with the best interests of the juvenile as determined by the department. The department shall supervise such placement and, if necessary, consent to any necessary emergency medical, psychological, or psychiatric treatment for such juvenile. The department shall have no other authority with regard to such temporary custody until or unless there is an order by the court placing the juvenile in the custody of the department. If the peace officer delivers temporary custody of the juvenile pursuant to this subdivision, the peace officer shall make a full written report to the county attorney within twenty-four hours of taking such juvenile into temporary custody. If a court order of temporary custody is not issued within forty-eight hours of taking the juvenile into custody, the temporary custody by the department shall terminate and the juvenile shall be returned to the custody of his or her parent, guardian, custodian, or relative; ~~or~~

(5) If the peace officer takes the juvenile into temporary custody pursuant to subdivision (4) of section 43-248, the peace officer may place the juvenile at a mental health facility for evaluation and emergency treatment or may deliver the juvenile to the Department of Health and Human Services as provided in subdivision (4) of this section. At the time of the admission or turning the juvenile over to the department, the peace officer responsible for taking the juvenile into custody shall execute a written certificate as prescribed by the Department of Health and Human Services which will indicate that the peace officer believes the juvenile to be mentally ill and dangerous, a summary of the subject's behavior supporting such allegations, and that the harm described in section 71-908 is likely to occur before proceedings before a juvenile court may be invoked to obtain custody of the juvenile. A copy of the certificate shall be forwarded to the county attorney. The peace officer shall notify the juvenile's parents, guardian, custodian, or relative of the juvenile's placement; or-

(6) Beginning July 1, 2010, a juvenile taken into custody pursuant to a legal warrant of arrest shall be delivered to the probation officer who shall determine the need for detention of the juvenile as provided in section 43-260.01. If detention is not required, the juvenile may be released without bond if such release is in the best interests of the juvenile, the safety of the community is not at risk, and the court that issued the warrant is notified that the juvenile has been taken into custody.

In determining the appropriate temporary placement of a juvenile under this section, the peace officer shall select the placement which is least restrictive of the juvenile's freedom so long as such placement is compatible with the best interests of the juvenile and the safety of the community.

Sec. 30. Section 43-276, Reissue Revised Statutes of Nebraska, is amended to read:

43-276 In cases coming within subdivision (1) of section 43-247, when there is concurrent jurisdiction, or subdivision (2) or (4) of section 43-247, when the juvenile is under the age of sixteen years, the county attorney shall, in making the determination whether to file a criminal

charge, file a juvenile court petition, offer juvenile pretrial diversion, or offer mediation, consider: (1) The type of treatment such juvenile would most likely be amenable to; (2) whether there is evidence that the alleged offense included violence or was committed in an aggressive and premeditated manner; (3) the motivation for the commission of the offense; (4) the age of the juvenile and the ages and circumstances of any others involved in the offense; (5) the previous history of the juvenile, including whether he or she had been convicted of any previous offenses or adjudicated in juvenile court, and, if so, whether such offenses were crimes against the person or relating to property, and other previous history of antisocial behavior, if any, including any patterns of physical violence; (6) the sophistication and maturity of the juvenile as determined by consideration of his or her home, school activities, emotional attitude and desire to be treated as an adult, pattern of living, and whether he or she has had previous contact with law enforcement agencies and courts and the nature thereof; (7) whether there are facilities particularly available to the juvenile court for treatment and rehabilitation of the juvenile; (8) whether the best interests of the juvenile and the security of the public may require that the juvenile continue in secure detention or under supervision for a period extending beyond his or her minority and, if so, the available alternatives best suited to this purpose; (9) whether the victim agrees to participate in mediation; (10) whether there is a juvenile pretrial diversion program established pursuant to sections 43-260.02 to 43-260.07; (11) whether the juvenile has been convicted of or has acknowledged unauthorized use or possession of a firearm; (12) whether a juvenile court order has been issued for the juvenile pursuant to section 43-2,106.03; (13) whether the juvenile is a criminal street gang member; and ~~(13)~~ (14) such other matters as the county attorney deems relevant to his or her decision.

Sec. 31. Section 47-632, Revised Statutes Cumulative Supplement, 2008, is amended to read:

47-632 (1) The Community Corrections Uniform Data Analysis Cash Fund is created. The Except as provided in subsection (2) of this section, the fund shall be established for administrative purposes only within the Nebraska Commission on Law Enforcement and Criminal Justice, and shall be administered by the executive director of the Community Corrections Council, and - The fund shall consist of money collected pursuant to section 47-633. The fund shall only be used to support operations costs and analysis relating to the implementation and coordination of the uniform analysis of crime data pursuant to the Community Corrections Act, including associated information technology projects, as specifically approved by the executive director of the Community Corrections Council. The fund shall consist of money collected pursuant to section 47-633.

(2) On the effective date of this act, the State Treasurer shall transfer three hundred fifty thousand dollars from the Community Corrections Uniform Data Analysis Cash Fund to the Violence Prevention Cash Fund.

(3) Any money in the fund Community Corrections Uniform Data Analysis Cash Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Sec. 32. Section 60-497.01, Revised Statutes Cumulative Supplement, 2008, is amended to read:

60-497.01 (1) An abstract of the court record of every case in which a person is convicted of violating any provision of the Motor Vehicle Operator's License Act, the Motor Vehicle Safety Responsibility Act, ~~or~~ the Nebraska Rules of the Road, or section 6 of this act, as from time to time amended by the Legislature, or any traffic regulations in city or village ordinances shall be transmitted within thirty days of sentencing or other disposition by the court to the director. Any abstract received by the director more than thirty days after the date of sentencing or other disposition shall be reported by the director to the State Court Administrator.

(2) Any person violating section 28-306, 60-696, 60-697, 60-6,196, 60-6,197, 60-6,213, or 60-6,214 who is placed on probation shall be assessed the same points under section 60-4,182 as if such person were not placed on probation unless a court has ordered that such person must obtain an ignition interlock permit in order to operate a motor vehicle with an ignition interlock device pursuant to section 60-6,211.05 and sufficient evidence is presented to the department that such a device is installed. For any other violation, the director shall not assess such person with any points under section 60-4,182 for such violation when the person is placed on probation until the director is advised by the court that such person previously placed on probation has violated the terms of his or her probation and such

probation has been revoked. Upon receiving notice of revocation of probation, the director shall assess to such person the points which such person would have been assessed had the person not been placed on probation. When a person fails to successfully complete probation, the court shall notify the director immediately.

Sec. 33. Section 69-2404, Revised Statutes Cumulative Supplement, 2008, is amended to read:

69-2404 Any person desiring to purchase, lease, rent, or receive transfer of a handgun shall apply with the chief of police or sheriff of the applicant's place of residence for a certificate. The application may be made in person or by mail. The application form and certificate shall be made on forms approved by the Superintendent of Law Enforcement and Public Safety. The application shall include the applicant's full name, ~~social security number~~, address, date of birth, and country of citizenship. If the applicant is not a United States citizen, the application shall include the applicant's place of birth and his or her alien or admission number. If the application is made in person, the applicant shall also present a current Nebraska motor vehicle operator's license, state identification card, or military identification card, or if the application is made by mail, the application form shall describe the license or card used for identification and be notarized by a notary public who has verified the identification of the applicant through such a license or card. An applicant shall receive a certificate if he or she is twenty-one years of age or older and is not prohibited from purchasing or possessing a handgun by 18 U.S.C. 922. A fee of five dollars shall be charged for each application for a certificate to cover the cost of a criminal history record check.

Sec. 34. Section 69-2407, Reissue Revised Statutes of Nebraska, is amended to read:

69-2407 A certificate issued in accordance with section 69-2404 shall contain the holder's name, ~~social security number~~, address, and date of birth and the effective date of the certificate. A certificate shall authorize the holder to acquire any number of handguns during the period that the certificate is valid. The certificate shall be valid throughout the state and shall become invalid three years after its effective date. If the chief of police or sheriff who issued the certificate determines that the applicant has become disqualified for the certificate under section 69-2404, he or she may immediately revoke the certificate and require the holder to surrender the certificate immediately. Revocation may be appealed pursuant to section 69-2406.

Sec. 35. Section 69-2410, Revised Statutes Cumulative Supplement, 2008, is amended to read:

69-2410 No importer, manufacturer, or dealer licensed pursuant to 18 U.S.C. 923 shall sell or deliver any handgun to another person other than a licensed importer, manufacturer, dealer, or collector until he or she has:

(1) (a) Inspected a valid certificate issued to such person pursuant to sections 69-2401, 69-2403 to 69-2408, and 69-2409.01; and

(b) Inspected a valid identification containing a photograph of such person which appropriately and completely identifies such person; or

(2) (a) Obtained a completed consent form from the potential buyer or transferee, which form shall be established by the Nebraska State Patrol and provided by the licensed importer, manufacturer, or dealer. The form shall include the name, address, date of birth, gender, race, ~~social security number~~ ~~or other identification number~~, and country of citizenship of such potential buyer or transferee. If the potential buyer or transferee is not a United States citizen, the completed consent form shall contain the potential buyer's or transferee's place of birth and his or her alien or admission number;

(b) Inspected a valid identification containing a photograph of the potential buyer or transferee which appropriately and completely identifies such person;

(c) Requested by toll-free telephone call or other electromagnetic communication that the Nebraska State Patrol conduct a criminal history record check; and

(d) Received a unique approval number for such inquiry from the Nebraska State Patrol indicating the date and number on the consent form.

Sec. 36. Section 69-2430, Revised Statutes Cumulative Supplement, 2008, is amended to read:

69-2430 (1) Application for a permit to carry a concealed handgun shall be made in person at any Nebraska State Patrol Troop Headquarters or office provided by the patrol for purposes of accepting such an application. The applicant shall present a current Nebraska motor vehicle operator's license, Nebraska-issued state identification card, or military identification card and shall submit two legible sets of fingerprints for a criminal history

record information check pursuant to section 69-2431. The application shall be made on a form prescribed by the Superintendent of Law Enforcement and Public Safety. The application shall state the applicant's full name, ~~social security number~~, motor vehicle operator's license number or state identification card number, address, and date of birth and contain the applicant's signature and shall include space for the applicant to affirm that he or she meets each and every one of the requirements set forth in section 69-2433. The applicant shall attach to the application proof of training and proof of vision as required in subdivision (3) of section 69-2433.

(2) A person applying for a permit to carry a concealed handgun who gives false information or offers false evidence of his or her identity is guilty of a Class IV felony.

(3) The permit to carry a concealed handgun shall be issued by the Nebraska State Patrol within five business days after completion of the applicant's criminal history record information check, if the applicant has complied with this section and has met all the requirements of section 69-2433.

(4) An applicant denied a permit to carry a concealed handgun may appeal to the district court of the judicial district of the county in which he or she resides or the county in which he or she applied for the permit pursuant to the Administrative Procedure Act.

Sec. 37. There is established within the Nebraska Commission on Law Enforcement and Criminal Justice the Office of Violence Prevention. The office shall consist of a director appointed by the Governor. There also is established an advisory council to the Office of Violence Prevention. The members of the advisory council shall be appointed by the Governor and serve at his or her discretion. The advisory council shall consist of six members and, of those members, each congressional district, as such districts existed on the effective date of this act, shall have at least one member on the council. The Governor shall consider appointing members representing the following areas, if practicable: Two members representing local government; two members representing law enforcement; one member representing community advocacy; and one member representing education with some expertise in law enforcement and juvenile crime. Members of the advisory council shall serve for terms of four years. A member may be reappointed at the expiration of his or her term. Any vacancy occurring other than by expiration of a term shall be filled for the remainder of the unexpired term in the same manner as the original appointment.

Sec. 38. Notwithstanding any other provision of law, membership on the advisory council to the Office of Violence Prevention shall not disqualify any member from holding his or her office or position or cause the forfeiture thereof.

Sec. 39. Members of the advisory council to the Office of Violence Prevention shall serve without compensation but may be reimbursed for their actual and necessary expenses incurred in the performance of their duties as provided in sections 81-1174 to 81-1177.

Sec. 40. (1) The Office of Violence Prevention and its director shall be administered and supervised, respectively, by the Nebraska Commission on Law Enforcement and Criminal Justice. Among its responsibilities, the Office of Violence Prevention and its director shall be responsible for developing, fostering, promoting, and assessing violence prevention programs. To accomplish this mission, the duties of the director shall include, but not be limited to, program fundraising, program evaluation, coordination of programs, and assistance with the administration and distribution of funds to violence prevention programs.

(2) The advisory council to the Office of Violence Prevention shall meet at least quarterly. Among its responsibilities, the advisory council shall recommend to the commission rules and regulations regarding program fundraising, program evaluation, coordination of programs, and the criteria used to assess and award funds to violence prevention programs. Priority for funding shall be given to communities and organizations seeking to implement violence prevention programs which appear to have the greatest benefit to the state and which have, as goals, the reduction of street and gang violence and the reduction of homicides and injuries caused by firearms. The duties of the advisory council shall include, but not be limited to, receiving applications for violence prevention funds, evaluating such applications, and making recommendations to the commission regarding the merits of each application and the amount of any funds that should be awarded. If any funds are awarded to a violence prevention program, the advisory council shall continuously monitor how such funds are being used by the program, conduct periodic evaluations of such programs, assess the progress and success regarding the stated goals of each program awarded funds, and recommend to the

commission any modification, continuation, or discontinuation of funding.

Sec. 41. The Violence Prevention Cash Fund is created. The fund shall be administered by the Nebraska Commission on Law Enforcement and Criminal Justice. The State Treasurer shall credit to the fund such money as is transferred to the fund by the Legislature, donated as gifts, bequests, or other contributions to such fund from public or private entities, and made available by any department or agency of the United States if so directed by such department or agency. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Sec. 42. Section 83-183, Reissue Revised Statutes of Nebraska, is amended to read:

83-183 (1) To establish good habits of work and responsibility, to foster vocational training, and to reduce the cost of operating the facilities, persons committed to the department shall be employed, eight hours per day, so far as possible in constructive and diversified activities in the production of goods, services, and foodstuffs to maintain the facilities, for state use, and for other purposes authorized by law. To accomplish these purposes, the director may establish and maintain industries and farms in appropriate facilities and may enter into arrangements with any other board or agency of the state, any natural resources district, or any other political subdivision, except for that any arrangements entered into with school districts, educational service units, community colleges, state colleges, or universities shall include supervision provided by the department, for the employment of persons committed to the department for state or governmental purposes. Nothing in this subsection shall be construed to effect a reduction in the number of work release positions.

(2) The director shall make rules and regulations governing the hours, conditions of labor, and the rates of compensation of persons committed to the department. In determining the rates of compensation, such regulations may take into consideration the quantity and quality of the work performed by such person, whether or not such work was performed during regular working hours, the skill required for its performance, and the economic value of similar work outside of correctional facilities.

(3) Except as provided in section 83-183.01, wage payments to a person committed to the department shall be set aside by the chief executive officer of the facility in a separate fund. The fund shall enable such person committed to the department to contribute to the support of his or her dependents, if any, to make necessary purchases from the commissary, and to set aside sums to be paid to him or her at the time of his or her release from the facility.

(4) The director may authorize the chief executive officer to invest the earnings of a person committed to the department. Any accrued interest thereon shall be credited to such person's fund.

(5) The director may authorize the chief executive officer to reimburse the state from the wage fund of a person committed to the department for:

(a) The actual value of property belonging to the state or any other person intentionally or recklessly destroyed by such person committed to the department during his or her commitment;

(b) The actual value of the damage or loss incurred as a result of unauthorized use of property belonging to the state or any other person by such person committed to the department;

(c) The actual cost to the state for injuries or other damages caused by intentional acts of such person committed to the department; and

(d) The reasonable costs incurred in returning such person committed to the department to the facility to which he or she is committed in the event of his or her escape.

(6) No person committed to the department shall be required to engage in excessive labor, and no such person shall be required to perform any work for which he or she is declared unfit by a physician designated by the director. No person who performs labor or work pursuant to this section shall be required to wear manacles, shackles, or other restraints.

(7) The director may authorize that a portion of the earnings of a person committed to the department be retained by that person for personal use.

Sec. 43. Sections 43 to 47 of this act shall be known and may be cited as the Lindsay Ann Burke Act.

Sec. 44. The Legislature finds and declares that all students have a right to work and study in a safe, supportive environment that is free from harassment, intimidation, and violence. The Legislature further finds that when a student is a victim of dating violence, his or her academic

life suffers and his or her safety at school is jeopardized. The Legislature therefor finds and declares that a policy to create a better understanding and awareness of dating violence shall be adopted by each school district. It is the intent of the Legislature to require each school district to establish a policy for educating staff and students about dating violence.

Sec. 45. For purposes of the Lindsay Ann Burke Act, unless the context otherwise requires:

(1) Dating partner means any person, regardless of gender, involved in an intimate relationship with another person primarily characterized by the expectation of affectionate involvement whether casual, serious, or long-term;

(2) Dating violence means a pattern of behavior where one person uses threats of, or actually uses, physical, sexual, verbal, or emotional abuse, to control his or her dating partner;

(3) Department means the State Department of Education; and

(4) School district has the same meaning as in section 79-101.

Sec. 46. (1) On or before March 1, 2010, the department shall develop and adopt a model dating violence policy to assist school districts in developing policies for dating violence.

(2) On or before July 1, 2010, each school district shall develop and adopt a specific policy to address incidents of dating violence involving students at school, which shall be made a part of the requirements for accreditation in accordance with section 79-703. Such policy shall include a statement that dating violence will not be tolerated.

(3) To ensure notice of a school district's dating violence policy, the policy shall be published in any school district handbook, manual, or similar publication that sets forth the comprehensive rules, procedures, and standards of conduct for students at school.

(4) Each school district shall provide dating violence training to staff deemed appropriate by a school district's administration. The dating violence training shall include, but not be limited to, basic awareness of dating violence, warning signs of dating violence, and the school district's dating violence policy. The dating violence training may be provided by any school district or combination of school districts, an educational service unit, or any combination of educational service units.

(5) Each school district shall inform the students' parents or legal guardians of the school district's dating violence policy. If requested, the school district shall provide the parents or legal guardians a copy of the school district's dating violence policy and relevant information.

(6) This section does not prevent a victim of dating violence from seeking redress under any other available law, either civil or criminal, and does not create or alter any existing tort liability.

Sec. 47. Each school district shall incorporate dating violence education that is age-appropriate into the school program. Dating violence education shall include, but not be limited to, defining dating violence, recognizing dating violence warning signs, and identifying characteristics of healthy dating relationships.

Sec. 48. If any section in this act or any part of any section is declared invalid or unconstitutional, the declaration shall not affect the validity or constitutionality of the remaining portions.

Sec. 49. Original sections 28-101, 28-111, 28-308, 28-309, 28-929, 28-930, 28-1201, 28-1202, 28-1204, 28-1204.01, 28-1204.04, 28-1205, 28-1206, 28-1207, 28-1208, 28-1212.02, 28-1212.03, 29-401, 29-901, 29-901.01, 29-1912, 29-2320, 29-2321, 43-245, 43-250, 43-276, 69-2407, and 83-183, Reissue Revised Statutes of Nebraska, and sections 13-2610, 47-632, 60-497.01, 69-2404, 69-2410, and 69-2430, Revised Statutes Cumulative Supplement, 2008, are repealed.

Sec. 50. The following sections are outright repealed: Sections 29-1928, 29-1929, and 29-2262.01, Reissue Revised Statutes of Nebraska.

Sec. 51. Since an emergency exists, this act takes effect when passed and approved according to law.